



ENVIRONMENTAL BOARD MOTION 111809-5a

Date: November 18, 2009

Subject: Environmental Board motion for the Heritage Tree Ordinance

Motioned By: Mary Gay Maxwell

Seconded By: J. Robert Anderson

Substitute Motion By: Mary Ann Neely

Seconded By : Jon Beall

The first substitute motion was to change “a” reasonable use to “all” reasonable in the following section of the Heritage Tree Ordinance:

**Part 8. Paragraph 25-8-624 -(A) (2) prevents all reasonable use;
The substitute motion failed on 5-2 vote.**

Second Substitute Motion By: Phil Moncada

Seconded By: Mary Gay Maxwell

The second substitute motion to strike the changes in the first substitute motion and to reinstate the original motion made by Mary Gay Maxwell passed on a 7-0 Vote.

Recommendation:

The Environmental Board recommends conditional approval of Ordinance #C20-2008-013 amending Section 6-3-48 and Chapter 25-8, Subchapter B, Article 1 of the city code relating to tree protection. See attached.

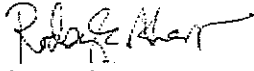
For: Ahart, Anderson, Beall, Gary, Maxwell, Moncada, and Neely.

Against:

Abstain:

Absent:

Approved By:

A handwritten signature in black ink, appearing to read "Rodney Ahart", written in a cursive style.

Rodney Ahart,
Environmental Board Vice Chair

11/18/09
ENVIRONMENTAL BOARD RECOMMENDATION
HERITAGE TREE ORDINANCE

Motion: The Environmental Board recommends conditional approval of Ordinance #C20-2008-013 amending Section 6-3-48 and Chapter 25-8, Subchapter B, Article 1 of the city code relating to tree protection with the following conditions:

Conditions:

A. Suggested changes to the Ordinance:

Part 2. Paragraph 25-8-602 -

(1) HERITAGE TREE means a tree that has a total diameter of 24 inches or more, measured four and one-half feet above natural grade, and is a species prescribed by rule as eligible for heritage tree designation.

Part 6. Paragraph 25-8-621 -

(B) A person may, without a permit, remove a damaged protected tree that is an imminent hazard to life or property;

Part 8. Paragraph 25-8-624 -

(A) (2) prevents a reasonable use;

(A) (4) is dead (delete dying);

Part 10. Paragraph 25-8-626 -

Restore (A) (1) (2) to read as it was originally stated.

Part 11. Paragraph 25-8-642

(A) (1) Delete dying;

(C) Delete entire paragraph.

B. Board Conditions:

In addition, the Environmental Board adds the following conditions to the conditional approval of the Ordinance:

1. Request that an updated tree inventory be conducted by the City of Austin that includes the following steps:

- Make available to the Environmental Board the list of all tree funds currently available that could be used to update tree inventory, ID Heritage trees, and smaller sized trees that make up the canopy of the Urban Forest;
- With Council support and community backing, including the development industry, utilize available funds to conduct a citywide

study of both Heritage trees and native tree species measuring less than 19" dbh, that comprise the "urban forest" of Austin.

- The results of the study would then be used to provide the necessary information to the City of Austin and the stakeholders (neighbors, property owners, developers, planners) in order to best preserve the urban forest of Austin as more development occurs. The tree cover of Austin is irreplaceable, and unspoken is the qualitative landscape character of Heritage trees that have survived in spite of decades of minimal supplemental watering.

2. Request that mitigation measures be revised to include the following:

- Adjust fees to National Arborist Association (or appropriate industry) standards for what is known as "casualty loss" values.
- These fees can be developed in the rules based on local tree values, and with input from industry or landscape and arborist professionals.
- Give double credit for the preservation of the smaller native trees (understory trees) that can be applied towards mitigation for the removal of protected or heritage trees.

3. Request that enforcement measures be developed that can be implemented in both situations requiring mitigation and in situations that involve the illegal removal of trees. It is also requested that these measures be included in the final version of the Ordinance, if possible. (See attached suggested enforcement provisions.)

4. Request that Council direct that a study be conducted on the economic impact of the Heritage Tree Ordinance on development projects.

5. Request an update from staff when wording in Paragraph 25-8-624(C) is adjusted to account for dangers to public safety posed by the presence of a protected or a Heritage tree.

6. Request that serious consideration be given to appointing a separate and independent Board (much like the Residential Design Commission and the Waterfront Planning Advisory Board) to review all requests for removal of Heritage trees that have first been reviewed by the City Arborist. This Board could be utilized instead of the administrative variance process and the Land Use Commission process. It would have authority to recommend approval of removal requests or disapproval of the requests. Appeal could be made to City Council or the Board of Adjustment. The use of a Board of this type could address a number of concerns by:

- Providing more transparency of the process;
- Allowing citizen participation in the process; and
- Reducing demand on staff and the Land Use Commission.

Rationale: The Heritage Tree Ordinance is being implemented in order to protect the iconic trees of the Austin urban forest. It is the intent of the Environmental Board to ensure that the ordinance be truly protective of the Heritage Trees and that there be no unintended consequences from having sections or words that could compromise the intent of the ordinance.

Additional Board conditions are provided that could, in opinion of the Board, strengthen protection of the Heritage Trees as well as broaden the scope of the protection to the Urban Forest of Austin.

It is vital at this point in time, given global warming and its effect on the Central Texas region, and given that Austin is in the throes of become a larger, more urban metropolis, that significant attention be given to protecting the Urban Forest both now and far into the future.

Attachment :

ENFORCEMENT PROVISIONS FOR HERITAGE TREE ORDINANCE [v.2]

Prepared by Brad Rockwell

There is much concern that provisions of the tree ordinance have been and will continue to be ignored because the penalties often incurred for destruction of the tree and very insignificant, particularly if big development projects are at stake. City staff has even opposed charging a fee for a tree removal permit on the grounds that such a fee would discourage compliance, implying that compliance is largely a discretionary and voluntary matter.

The tree ordinance should be amended as follows to expressly include penalties that will serve as an important incentive to compliance with the tree ordinance. Each subsection – (A), (B) and (C) – is independent and provides its own measure of enforcement. The daily Class C misdemeanor fines are based on section 1-1-99 of the current City of Austin Code of Ordinances and the civil penalty provisions are based on section 54.017(b) and 54.001(b) of the Texas Local Government Code.

§ 25-8-649 ENFORCEMENT

- (A) It is unlawful and an offense to remove or cause to be removed a Heritage tree without a permit or unexpired variance and without having obtained approval from the City of a mitigation plan for the particular tree.
 - (1) For each day a Heritage tree is unlawfully removed without the existence of an approved mitigation plan specific to that tree, the landowner and all other individuals and entities who have caused the Heritage tree to be removed are subject to a Class C misdemeanor fine not to exceed \$2000 per day for each removed tree until a mitigation plan is approved.
 - (2) For each day a Heritage tree is unlawfully removed without the existence of an approved mitigation plan for that tree, the landowner and the individuals and entities who have caused the Heritage tree to be removed are subject to civil penalties not to exceed \$1000 per day for each removed tree until a mitigation plan is approved.
- (B) When any violation of the Code provisions protecting Heritage trees occurs on a construction site, City staff shall issue a stop work order and no further construction shall be allowed on the site until the tree removal is fully mitigated.
 - (1) No certificate of occupancy shall issue until an approved mitigation plan has been implemented and all fines imposed for the violation have been paid.

(2) The prohibition in this subsection against further construction does not apply to construction activities needed to secure the site, prevent a nuisance, prevent environmental contamination or discharge, protect property, health or human safety, or mitigate the removal of a Heritage tree.

(C) Before construction commences on a site, the applicant must provide fiscal security in the amount of _____ for each protected tree on any construction site.

(1) This security will be returned to the applicant after full mitigation has occurred and the replacement trees are shown to be healthy two years after the latter of either: a) a certificate of occupancy is issued; or b) the mitigation plan has been fully executed.

(2) In the event that the replacement trees are not shown to be healthy pursuant to the terms of subsection (C)(1), the applicant may secure return of the security two years after new trees are planted and shown to be healthy pursuant to a new mitigation plan approved by the City. Alternatively, if within two and a half years after the latter of either (a) a certificate of occupancy being issued or (b) the original mitigation plan being executed, the applicant has not submitted and secured approval for a new mitigation plan, the City may use the security at its discretion to plant and care for trees, including, but not limited to, trees on the property that was the original construction site.

(D) These enforcement provisions are non-exclusive and are in addition to any other civil penalties or remedies or criminal liability that may exist under other law.

